

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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KRISTY HENDERSON,

Plaintiffs,

VS.

JOHN BONAVENTURA,

Defendants.

2:13-cv-01921-RCJ-VCF

ORDER DENYING DEFENDANTS' MOTION TO STAY DISCOVERY (#68)

On February 25, 2014, Defendants John Bonaventura, the Las Vegas Constable's Office and Lou Toomin filed a motion to dismiss plaintiff's complaint (#67). In this concurrently filed motion, they seek a stay of discovery pending disposition of his motion to dismiss.

To establish good cause for a discovery stay, the moving party must show more than that an apparently meritorious Motion to Dismiss is pending. Instead, the district court may stay discovery only when it is convinced that the plaintiff will be unable to state a claim for relief. *Wood v. McEwen*, 644 F.2d 797 (9th Cir. 1981).

Defendants summarize the issues raised in their motion to dismiss, together with the outcome they expect as follows:

There are sufficient grounds to order a stay of discovery as Defendants raise, inter alia, Plaintiff's failure to satisfy standing under Title VII as an “employee”, the existence of administrative and discretionary immunity under Gonzalez, the application of the Colorado River Doctrine to repetitive filings, the application of the “At-Will” Doctrine in Nevada, and the failure to exhaust state administrative remedies, all gateway issues warranting a stay. Def.'s Mot. (#67). Each of these issues is also a question of law that can be resolved without discovery. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir.2001).

Docket No. 68, page 2, lines 3-9.

1 Having reviewed the Motion (#68), the Opposition (#70) and the Reply (#71)¹, the court is not
2 convinced that plaintiff will be unable to state a claim for relief in this case. To the extent that the
3 defenses raised in the motion to dismiss may be meritorious, they rely on questions of fact.

4 Accordingly, Defendants' Motion to Stay Discovery Pending Defendants' Second Motion To
5 Dismiss, Alternative, Motion for Summary Judgment (#68) is DENIED.

6 DATED this 28th day of March, 2014.



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8 CAM FERENBACH
9 UNITED STATES MAGISTRATE JUDGE
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22 ¹ In their reply to the motion to stay (#71) and in the reply in support of the
23 motion to dismiss (#73), Defendants raise a new issue: that plaintiff failed to
disclose the subject litigation in her bankruptcy filings and is therefore estopped
from pursuing her claims here. It is unlikely that the District Judge will grant
relief based on arguments raised for the first time in a reply. Additionally, the
24 defense of judicial estoppel pursuant to *Dzakula v. McHugh*, ___ F.3d ___ (No. 11-
16404, 9th Cir. 2014), raises the factual issue of whether or not the omission was
25 inadvertent. *Id.* pp. 4-7.